

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TROI TORAIN, :  
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 : Plaintiff, :  
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 :  
 : -against- :  
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 : RAASHUAN CASEY, IHEART MEDIA, INC., :  
 : and REVOLT MEDIA & TV, LLC, :  
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 : Defendants. :  
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VALERIE CAPRONI, United States District Judge:

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16-CV-2682 (VEC)(JCF)

ORDER ADOPTING REPORT &  
RECOMMENDATION

Plaintiff Troi Torain, proceeding *pro se*, alleges that Defendants used his name without authorization in the course of a 2015 radio broadcast. Plaintiff asserts claims under Section 51 of the New York Civil Rights Law and for common law emotional distress; negligent hiring, supervision, and retention; and gross negligence. Compl. ¶¶ 1-2. In response, Defendants moved to dismiss for failure to state a claim. Dkts. 8, 12. On April 20, 2016, this Court referred the action to Magistrate Judge James C. Francis IV for the preparation of a report and recommendation pursuant to 28 U.S.C. § 636(b). Dkt. 15. On September 16, 2016, Judge Francis issued his Report and Recommendation (the “R&R”), recommending the Court grant Defendants’ motions to dismiss with respect to all claims and provide Plaintiff leave to amend his complaint. Dkt. 34. Plaintiff has not filed any objections to the R&R.

**DISCUSSION**

In reviewing a report and recommendation, a district court “may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” 28 U.S.C. § 636(b)(1). When no objections are made to a magistrate judge’s report, a district court may adopt the report so long as “there is no clear error on the face of the record.” *Phillips v. Reed*

*Grp., Ltd.*, 955 F. Supp. 2d 201, 211 (S.D.N.Y. 2013) (citing *Nelson v. Smith*, 618 F. Supp. 1186, 1189 (S.D.N.Y. 1985)). Failure to file timely objections to the magistrate judge's report constitutes a waiver of those objections in the district court and on later appeal to the United States Court of Appeals. *See Small v. Sec'y of Health & Human Servs.*, 892 F.2d 15, 16 (2d Cir. 1989) (*per curiam*); *see also Thomas v. Arn*, 474 U.S. 140, 149–50 (1985) (holding that Section 636 does not require review of a magistrate's findings if no party objects).

Because no objections were filed to the R&R, the Court reviews for “clear error.” *Phillips*, 955 F. Supp. 2d at 211. Upon careful review, the Court finds no clear error in Magistrate Judge Francis's thoughtful and well-reasoned decision. Accordingly, the Court adopts the R&R in full.

### CONCLUSION

Defendants' motions to dismiss are GRANTED. Plaintiff is granted permission to file an amended complaint, if he so chooses, on or before **December 2, 2016**. Plaintiff is reminded, however, that pro se litigants, like all litigants, are required to submit only pleadings that are supported by fact and law.<sup>1</sup> Breach of this duty may result in sanctions, including an award of attorneys' fees to Defendants. Fed. R. Civ. P. 11(b), (c). Failure to file an amended complaint will result in dismissal of this action with prejudice.

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<sup>1</sup> Should Plaintiff be interested in assistance in this litigation, he may contact the District's pro se clinic, which is available to help pro se litigants such as himself. The Clinic is not a part of, or run by, the Court, it is operated by a private organization, the New York Legal Assistance Group. The Clinic is located in the Thurgood Marshall United States Courthouse, 40 Centre Street, New York, New York, 10007, in Room LL22. The Clinic is open on weekdays from 10 a.m. to 4 p.m., except on days when the Court is closed. An unrepresented party can make an appointment in person or by calling (212) 659-6190.

The Clerk of Court is respectfully requested to close the open motions at docket entries 8 and 12. The Clerk of Court is further requested to mail a copy of this Order and the R&R to Plaintiff and note service on the docket.

**SO ORDERED.**

**Date: November 14, 2016**  
**New York, New York**

  
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**VALERIE CAPRONI**  
**United States District Judge**